

SERVICE DATE - AUGUST 14, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33871

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--
ACQUISITION EXEMPTION--LINES OF UNION PACIFIC RAILROAD COMPANY

Decided: August 4, 2000

On May 16, 2000, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to purchase from Union Pacific Railroad Company (UP), and to operate, a 2.25-mile segment of rail line between milepost 533 in Orin, WY, and milepost 530.75 in Orin Junction, WY, and UP's undivided one-half ownership interest in a 3.06-mile segment of rail line between milepost 530.75 and milepost 527.69 in Fisher, WY, a total of 5.31 miles.¹ We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

Since August 1999, BNSF has transported coal in unit train service from a loadout at Cordero Junction, WY, approximately 104 miles north of Orin Junction, to a coal-fired electrical power plant at Dave, WY (the Dave Johnson Plant), approximately 37 miles northwest of Orin. BNSF, which serves both the origin and destination, must follow a circuitous route around UP's intervening Orin-Orin Junction line segment because BNSF has no operating rights there.²

BNSF states that the proposed transaction will improve operational efficiency in the handling of coal trains to and from the Dave Johnson Plant by allowing BNSF to operate directly to and from that location without the current need to bypass the Orin-Orin Junction line segment.

BNSF also states that UP has had no rail operations over the line segments since October 1998, and that there are no rail-served customers at any point along the involved 5.31-mile line.

¹ The terms of the purchase are contained in an Asset Purchase Agreement entered into by BNSF and UP on May 1, 2000, and attached to the petition as Exhibit A.

² BNSF moves southbound unit trains over the joint BNSF-UP line between Fisher and Orin Junction, and then over the eastern leg of the wye (owned by BNSF) through Bridger Junction to a siding located on BNSF's line at Bona (approximately 4 miles southeast of Bridger Junction). At Bona, the locomotives are disconnected from the train and run around to the opposite end to complete the move westward (through the southwestern leg of the wye owned by BNSF between Bridger Junction and Orin) to the power plant at Dave. The same process in reverse must be followed for the empty return trip.

BNSF currently operates an average of 27 trains per day (in both directions) between Fisher and Orin Junction, and the transaction will not result in any increase in rail traffic on that line segment. There are currently no rail operations on the Orin-Orin Junction line segment, and following track rehabilitation there, BNSF plans to operate a total of two trains per day (one in each direction). The proposed acquisition will not extend BNSF service into any markets or regions it does not already serve, nor will it remove UP from any of its existing markets. Both carriers will continue to serve the same regions and markets that they do today.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to purchase the property of another rail carrier. Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. By minimizing the administrative expense of the application process, an exemption will reduce barriers to entry and exit [49 U.S.C. 10101(7)]. An exemption will also promote a safe and efficient rail transportation system, ensure coordination between rail carriers, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)].

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The stated purpose of the proposed transaction is to permit BNSF to operate its trains more efficiently. According to BNSF, there are no rail-served customers located along either line segment, and the proposed transaction will neither allow BNSF entry into markets or territories it does not already serve, nor prevent UP from serving markets or territories it now serves. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because BNSF's acquisition and operation will not significantly increase the level of operations previously conducted by UP, and those operations will not exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5). Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because petitioner has no plans to dispose of

or alter historic properties.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the above-described transaction from the prior approval requirements of 49 U.S.C. 11323-25, subject to the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

2. Notice will be published in the Federal Register on August 14, 2000.

3. This exemption will be effective on September 13, 2000. Petitions to stay must be filed by August 24, 2000. Petitions to reopen must be filed by September 5, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary